



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/173506

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 07, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on May 03, 2016, via telephone.

The issue for determination is whether this appeal is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner was sent 2 FoodShare overpayment notices, one dated December 4, 2014 and the other December 5, 2014, and each informed Petitioner that she had been overpaid FoodShare benefits in the amount of \$3825.00 for the period of January 2014 through November 2014. Both were sent to Petitioner at the above address and the December 5, 2014 notice does contain appeal instructions. The appeal deadline is noted to be March 5, 2015.
3. This appeal was filed on April 7, 2016.

### DISCUSSION

The Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority, to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. *See FoodShare Wisconsin Handbook (FSH), §6.4.1 and 7 CFR §273.15(g)*. Thus the Division of Hearings and Appeals, by law, lost authority to make a decision here after the appeal deadline passed so I must conclude that the Division of Hearings and Appeals does not have authority to make a determination on the merits of this matter as Petitioner did not timely filed her appeal.

### CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have authority to make a determination on the merits this matter as Petitioner's appeal is not timely.

**THEREFORE, it is**

### ORDERED

That this appeal is dismissed.

### REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### APPEAL TO COURT

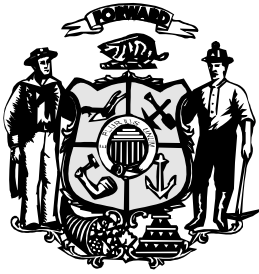
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 2nd day of June, 2016

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 2, 2016.

Waukesha County Health and Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability